These comments are submitted on behalf of the Confederated Salish and Kootenai Tribes (CSKT) to supplement comments that we will make during the meeting. Thank you in advance for considering our comments.

1. CSKT participated from Day 1 in the multi-year process that led to the adoption of ARM 17.30.632, both on the Lake Koocanusa Monitoring and Research Working Group, and on the Selenium Technical Subcommittee.

2. Following the transparent and collaborative transboundary process, CSKT, in close alignment with the KTOI, supported the adoption of the selenium standard of 0.8 ug/L for the water column, and 15.1 ug/kg for fish tissue for Koocanusa Reservoir.

3. These numbers were determined to be protective of fish in Koocanusa Reservoir, and the Kootenai River downstream in MT and ID, based on data collected in the Reservoir by MT DEQ, MT FWP, USGS, USACoE and Teck Coal.

4. In fact, current levels of selenium in Koocanusa Reservoir average 1.0 ug/L, and several species of fish in the reservoir already exceed the toxicity threshold for selenium, providing further justification for the selenium standard of 0.8 ug/L to protect fish in the reservoir and downstream uses.

5. The current standard was the result of 6 years of deliberation, data collection and scientifically defensible analysis, across tribal, federal, state, provincial, and local governments.

6. Not only is the standard protective of beneficial uses, as required by the Clean Water Act, it is critical to protect downstream waters in Montana and Idaho from unchecked mine contamination entering tribal, state and US waters from mining in British Columbia.

7. Currently, Teck is proposing to expand the Elk Valley mines to create the largest mine in all of British Columbia in this very same watershed. The proposed mitigation technology, although promising, is experimental and has not been proven to be effective at the scale of the current mines in the Elk Valley.

8. In 2014, the government of BC ordered Teck Coal to stabilize and decrease contaminant trends from their mines. Over the last seven years, despite a ministerial order to decrease the contamination, selenium and nitrate concentrations in the Elk River, Koocanusa Reservoir and the Kootenai River downstream have steadily increased.

9. It is also important to note that in November of 2021, the Province of BC announced their proposed selenium objective for Koocanusa Reservoir of 0.85 ug/L. Given that the Province, the state of MT, and the federal and tribal governments have now agreed upon a protective criteria for Koocanusa Reservoir, further study of the standard is redundant and unnecessary.

10. It is more important that all governments now turn their attention to evaluating whether the selenium standard is being met, and ensure protection of the fish and beneficial uses in Koocanusa Reservoir and the Kootenai River downstream.

Regarding Stringency Review, we submit the following comments. They are only a portion of the CSKT and KTOI responses to the Board of Environmental Review's Notice of Schedule for Implementation of Review In the Matter of the Petitions of Teck Coal Limited and the Board of County Commissioners of Lincoln County, Montana, Stringency Review of Rule Pertaining to Selenium) Standard for Lake Koocanusa.

The new selenium standard does not violate MT state law because it is not more stringent than the federal standard - the new criteria adopted the federal standard for fish tissue (15.1 ug/g) and then back-calculated the water column number to protect fish, based on current data for selenium in fish tissue in the reservoir. The process and results are consistent with applicable Montana and Federal law.

Additionally, EPA guidance on the development of site-specific selenium criterion specifically states that, "when implementing the criterion, the fish tissue elements take precedence over the water column elements, except in certain circumstances." This is because chronic exposure to selenium in fish can result in reproductive impairments, including deformity and mortality. The EPA guidance also recommends that states and tribes develop site-specific recommendations to account for local conditions. This is precisely the process that was undertaken, over six years, by state, provincial, local, and tribe/First Nation governments to jointly develop the selenium standard of 0.8 ug/L for Koocanusa Reservoir. In fact, over the last ten years, data from Koocanusa Reservoir demonstrate that several species of fish exceed the egg-ovary toxicity threshold for selenium, providing scientific basis for adopting the federal standard of 15.1 ug/g for egg-ovary, and 0.8 ug/L for the water column.

Below Libby Dam in the Kootenai River, the Kootenai Tribe of Idaho has measured elevated Se concentrations in both burbot and sturgeon egg tissue, along with other native fish species that are culturally important to the Kootenai Tribe. Egg criteria exceedances of native Mountain Whitefish have been documented. In Idaho, selenium from the mines is both persistent and pervasive throughout the lower Kootenay/Kootenai River. Currently, the Kootenai River in Idaho is listed as 'impaired' for selenium.

It is further relevant to note in November 2021 at the last meeting of the joint MT-BC Lake Koocanusa Monitoring and Research Working Group, the Province of British Columbia announced its proposed revised selenium objective of 0.85 ug/L, arrived at based on the site-specific fish tissue data for Koocanusa Reservoir.

*The CSKT incorporate by reference their previous comments and submissions to the Board of Environmental Review regarding a selenium standard for lake Koocanusa. With the submission of these comments or participation in any forum, the CSKT do not expressly or impliedly waive any collective or independent legal rights, causes of actions, or the right to raise additional matters or provide supplemental/supporting information regarding any legislative, administrative, legal, or other process in any legal, administrative, or other fora relevant to this matter.*